

APPEAL NO. 93450

The attorney for the carrier appeals an award of attorney's fees approved by (hearing officer) hearing officer, following a contested case hearing on issues relating to the occurrence of an injury, and disability, for claimant. The hearing officer determined the substantive issues in favor of the claimant, who was determined to have aggravated a back condition and thereby sustained injury on (date of injury).

The attorney for the carrier claimed, as attorney's fees, \$6,813.00 plus \$369.89 expenses. The fee portion was claimed as 64.5 hours of attorney time at \$105 per hour, and 0.9 hours of paralegal time at \$45 per hour. The hearing officer allowed all of the expenses, and attorney's fees in the amount of \$3,328.50, for a total of \$3,698.39.

The attorney appeals this determination, arguing only that the fees were reasonable and necessary. There is no further description of aspects of the case which may justify a higher fee than that allowed by guidelines set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4 (Rule 152.4).

DECISION

We affirm the hearing officer's decision.

The hearing case file indicates that there was a benefit review conference and a contested case hearing in this case, and that the issue of compensability involved what was essentially a "sole cause" defense for the carrier, who claimed that any injury or disability related to a preexisting injury and back surgery undergone by the claimant. It appears that the fact of an incident on (date of injury), was undisputed although the defense contended the incident was staged. The contested case hearing spanned two days. Claimant was not represented. Time was approved by the hearing officer for both the benefit review conference and the contested case hearing. The hearing officer's action was taken in accordance with the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-4.091 (Vernon Supp. 1993) (1989 Act), relating to approval of attorney's fees for defending a workers' compensation claim.

In addition, only a few days prior to the contested case hearing, the attorney claimed fees relating to attendance at another benefit review conference. Neither the hearing case file nor the hearings decision on the merits of the case document the need for or the purpose of this benefit review conference; however, the hearing officer approved fees for this and we will therefore assume that the conference was material to the progress of the claim.

The hearing officer's order on attorney's fees states that "[t]here was no request here for higher fee per Rule 152.4." Rule 152.4(c) provides that an attorney may request approval for more hours than those set forth in the guidelines contained in that rule, but "must demonstrate to the satisfaction of the Commission that the higher fee was justified by the effort necessary to preserve the client's interest, or the complexity of the legal and factual

issues involved." The appeal also lacks such a justification. We note that the hearing officer does seem to have allowed some leeway in excess of the guidelines set out in Rule 152.4 to the extent that actual time taken at the contested case hearing and benefit review conferences was allowed. Other than that, we cannot see that any showing has been made of the factors set forth in Article 8308-4.09(c), incorporated into Article 8308-4.091(c), or of any justification as provided in Rule 152.4(c), over and above the assertion that the fees were reasonable and necessary. We are not aware that there is anything inherently more complicated in the nature of this case or the sole cause defense, without the required justification by the attorney.

Our standard of review for approval of attorney's fees is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992. Without some indication from the carrier's attorney as to why the issues in this hearing, against an unrepresented claimant, consumed in excess of 65 hours, (which is several times the hourly guidelines set out in Rule 152.4), we cannot say that the hearing officer abused his discretion or acted arbitrarily by reducing the claimed fees as he did. See Texas Workers' Compensation Commission Appeal No. 92381, decided September 14, 1992. We therefore affirm the award made by the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge